

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

CHARLES W. BECK and ANNETTE S. *
BECK,

*

Plaintiffs,

*

vs.

CASE NO. 3:16-CV-2 (CDL)

*

BANK OF AMERICA HOME LOANS,

*

Defendant.

*

O R D E R

Plaintiffs Charles and Annette Beck, who are proceeding *pro se*, filed a motion for default judgment against Defendant "Bank of America Home Loans" (ECF No. 11). Plaintiffs represent that Defendant was served with the summons and complaint on January 6, 2016. Defendant did not file an answer within twenty-one days, and Plaintiffs filed their motion for default judgment. As discussed in more detail below, however, Plaintiffs did not present any evidence that Defendant was served with the summons and complaint on January 6, 2016. Rather, the record establishes that Defendant received a request to waive service and timely waived service. The deadline for Defendant to answer has not yet passed, so Defendant is not in default and Plaintiffs' motion for default judgment must be denied.

Plaintiffs filed this action on January 6, 2016. Compl., ECF No. 1. Plaintiffs named "Bank of America Home Loans" as the

Defendant. *Id.* The Magistrate Judge granted Plaintiffs' motion to proceed *in forma pauperis* and directed that the U.S. Marshal serve the Defendant. Order Granting Mot. for Leave to Proceed In Forma Pauperis, Jan. 21, 2016, ECF No. 3. An employee of the U.S. Marshal mailed a waiver of service to "Bank of America Home Loans" via CT Corporation System, but CT Corporation responded that "Bank of America Home Loans" was not listed in its records, so CT Corporation could not forward the waiver of service. Letter from CT Corp. to Gena Godwin (Jan. 28, 2016), ECF No. 7-1. An employee of the U.S. Marshal mailed a second waiver of service to "Bank of America Home Loans" at the headquarters of Bank of America Corporation in Charlotte, N.C. on February 18, 2016. Process Receipt & Return, ECF No. 10. Defendant filed a waiver of service on March 21, 2016.¹ Defendant thus has sixty days from February 18, 2016 to answer or otherwise respond to Plaintiffs' complaint. Fed. R. Civ. P. 4(d)(3).

Plaintiffs represent that the summons and complaint were served on Bank of America Home Loans on January 6, 2016. Beck Aff. ¶ 2, ECF No. 11-1. But Plaintiffs did not submit a proof of service showing that Defendant was actually served on January 6, 2016 in accordance with Federal Rule of Civil Procedure 4(h).

¹ The Court notes that Bank of America, N.A.—not "Bank of America Home Loans" filed the response to Plaintiffs' motion for default judgment. Bank of America, N.A. asserts that "'Bank of America Home Loans' . . . is not a known entity" and that Bank of America, N.A. assumes that Plaintiffs meant to name it instead.

Rather, as discussed above, the record reflects that the Magistrate Judge directed the U.S. Marshal to serve Defendant, that the U.S. Marshal requested a waiver of service, that Defendant waived service, and that the deadline for Defendant to answer or otherwise respond to Plaintiffs' complaint has not yet passed. Defendant is not in default. Plaintiffs' motion for default judgment (ECF No. 11) is therefore denied.

IT IS SO ORDERED, this 6th day of April, 2016.

s/Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA